IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3546 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

CHAMPABEN W/O CHANDRASINH DHULABHAI RATHOD & 3 - Appellant(s)
Versus
ANOPSINH SOMABHAI BARIA & 2 - Defendant(s)

==========

Appearance :
MR MTM HAKIM for Appellant(s) : 1 - 4.
NOTICE SERVED for Defendant(s) : 1 - 2.
MR RAJNI H MEHTA for Defendant(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

In this appeal under Section 173 of the Motor Vehicles Act, 1988, the original claimants have prayed for enhancement of the compensation awarded by Motor Accident Claims Tribunal, Panchmahals at Godhra in MACP No.495/1995 on account of the death of Chandrasinh Dhulabhai Rathod who died at the age of 45 years in motor vehicle accident between a Tractor-Trolley insured by respondent no.3-United India Insurance Co. ltd. and Scooter being driven by the deceased. The petition was filed for compensation of Rs.15,00,000/-. The Tribunal awarded compensation of Rs.6,31,000/- with proportionate costs and interest. In this appeal, widow and three children of the deceased have prayed for additional compensation of Rs. 2,00,000/-.

2. On 5th May, 1995, the deceased was driving his Scooter on a public road in the Panchmahals District when it was knocked down by the Tractor-Trolley insured by respondent no.3 insurance company causing fatal injuries to the Scooter driver. The Tribunal held the driver of the Tractor-Trolley entirely responsible for the accident in question. The insurance company has not filed any cross appeal or cross objections. It is therefore, not necessary to give any further facts having bearing on the question of negligence.

3. On the question of quantum of compensation, claimants produced the evidence regarding the income which the deceased was actually receiving on the date of accident and further examined an employee of the Taluka Panchayat for showing that deceased was employed as Talati-cum-Mantri since the year 1974 and that on the date of accident in May, 1995, the deceased was receiving basic pay of Rs. 1440/- and that with dearness allowance, his total emoluments were

Rs.3,858/- per month. The witness further stated that with effect from 1st January, 1996 the pay scale of Talati-cum-Mantri was revised to Rs.4,000-6,000 and that the basic pay of the deceased on the date of deposition i.e. in August 1999 would have been Rs.4800/- per month and with dearness allowance his total emoluments would have been Rs.6,781/- per month. The witness further stated that the deceased would have retired in October 2007 and would also have received gratuity, provident fund, leave encashment, etc.

4. On the basis of the above evidence, the Tribunal assessed the prospective income of the deceased at Rs. 6,000/- per month and deducted 1/3rd amount for his personal expenditure. Dependency benefit was thus assessed at Rs. 4,000/- per month i.e. Rs. 48,000/- per annum. The Tribunal adopted multiplier of 12 years and computed the compensation for loss of dependency benefits at Rs. 5,76,000/-(Rs.48,000x12). The Tribunal further added conventional amounts of Rs. 20,000/- for loss to estate, Rs.10,000/- for loss of consortium and Rs.5,000/- for funeral expenses. The Tribunal also awarded a sum of Rs.20,000/- for loss of gratuity, LTC benefits, etc. The Tribunal thus awarded total compensation of Rs.6,31,000/- along with proportionate costs and interest at the rate of 12% per annum from the date of claim petition till realisation.

5. Mr. Hakim, learned advocate appearing for the appellant claimants has made following principal submissions:

(i) The Tribunal erred in assessing the prospective income of the deceased only at Rs.6,000/- per month when there was ample evidence on record for assessing the prospective

income at a much higher figure.

(ii) The Tribunal erred in adopting the multiplier of 12 years. As per the Second Schedule to the Motor Vehicles Act, 1988 the multiplier of 15 years was required to be adopted.

6. On the other hand Mr. R.H. Mehta, learned advocate appearing for respondent no.3 insurance company has opposed the appeal and submitted that the Tribunal erred in adopting the multiplier of 12 years when the deceased was 45 years old on the date of accident. It is further submitted that the Tribunal also erred in awarding interest at the rate of 12% per annum. He submitted that therefore, even if there is any scope for increasing the dependency benefit, the award needs no enhancement.

7. Having heard the learned advocates appearing for the parties and having gone through the evidence on record, we find considerable substance in the first grievance made on behalf of the claimants.

8. Chimanbhai Kantibhai Patel who was examined at exh. 36, was a Junior Clerk with Kalol Taluka Panchayat under whom the deceased was serving as Talati-cum-Mantri. As per the service details given by this witness, the deceased was appointed as Talati-cum-Mantri on 30th January, 1974. In May 1995 the basic pay of the deceased was Rs. 1400/- per month and with dearness allowance, his total emoluments were Rs. 3858/- per month. The pay scale for the Talati-cum-Mantri was revised to Rs.4,000-6,000 with effect from 1st January, 1996 with annual increment of Rs. 100/-. As per the Certificate produced by this witness, the basic pay of the deceased would have been Rs.4800/- per month and dearness

allowance on that date was 32% of the basic pay. The deceased would have superannuated in October 2007. Taking these figures into consideration, the salary which the deceased would have received in the year 2001 (the mean year between the date of accident and date of retirement), may appropriately be taken in the facts of this case as the prospective income of the deceased. Considering the annual increments and the gradual rise in the rate of dearness allowance, the prospective income of the deceased in the year 2001 can safely be taken at Rs. 5,000/- basic pay plus Rs. 2200/- dearness allowance i.e. total emoluments of Rs. 7200/- per month. Deducting 1/3rd therefrom as the personal expenses of the deceased, the net dependency benefit works out to Rs. 4800/- per month i.e. Rs. 57,600/- per annum.

9. This takes us to the question of multiplier which was vehemently argued by both the sides.

While Mr. Hakim for the appellant-claimants heavily relied on various decisions of the Apex Court to contend that multiplier as per the Second Schedule ought to have been adopted by the Tribunal, Mr. R.H. Mehta for the insurance company heavily relied on three recent decisions of the Apex Court to submit that the multiplier of only 9 years could have been adopted by the Tribunal.

10. In **Kaushnuma Begum(Smt) and others v. New India Assurance Co. Ltd and others**, (2001)2 SCC 9, the Apex Court observed in paragraph 22 of the judgement as under :

> “In calculating the amount of compensation in this case we lean ourselves to adopt the structured formula provided in the Second Schedule to the MV Act. Though

> it was formulated for the purpose of Section 163-A of the MV Act, we find it a safer guidance for arriving at the amount of compensation than any other method so far as the present case is concerned."

In **H.S. Ahammed Hussain & anr. v. Irfan Ahammed & anr.**,2002(2) GLR 1825 = 2002(6) SCC 52, the Apex Court referred to the multiplier provided under Second Schedule to compute the compensation payable to the claimants. It may be noted that in the said case, the High Court had believed the income of the deceased at Rs.18,000/- per annum which finding was not disturbed by the Supreme Court.

In **Arati Bezbaruah v. Dy. Director General, Geological Survey of India and another**, 2003 ACJ 680 = 2003(3) SCC 148, the deceased was aged 40 years. He was shown to have been earning income of Rs.3500/- per month on the date of accident i.e. Rs.42,000/- p.a. The Apex Court taking into account the future prospects, assessed the prospective income of the deceased at Rs. 45,000/- per annum and assessed dependency benefit of the claimants at Rs. 30,000/- per annum. With respect to choice of multiplier of 15 adopted by the Tribunal, the Apex Court made the following observations :

> "11. It is now a well settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of section 166 thereof. Deviation of the structured formula, however, as has been held by this court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case.
>
> 12. The victim at the relevant time was 40 years of age. The Tribunal and the High Court, therefore, cannot

> be said to have committed an error in applying the multiplier of 15....”

In **Chellammal and others v. Kailasam and another**, (2002) 11 SCC 387 = 2006(2) ACJ 854, the deceased was aged 41 years. The High Court had determined annual loss of dependency at Rs. 39,300/- and applied the multiplier of 12. The Apex Court observed that as the age of the deceased at the time of his death was 41 years, according to the Second Schedule appended to the Motor Vehicles Act, 1988, the multiplier that could have been applied was 15 and not 12. Accordingly, loss of dependency benefit was worked out by applying multiplier of 15.

In **Kanhaiyalal Kataria and others v. Mukul Chaturvedi and others**, (2005) 12 SCC 190 = 2006(4) ACJ 689, the deceased was aged 32 years. He was awarded compensation of Rs. 2,50,000/- by adopting multiplier of 16. The Apex Court taking note of the fact that in the Second Schedule to the Act for a person in the age group of 30 to 35 years, multiplier of 17 has been indicated, applied the multiplier of 17 to enhance the compensation payable to the claimants.

In **Jyoti Kaul and others v. State of M.P. and another**, (2002) 6 SCC 306, decided on February 8, 2000, the Apex Court made following observations on the question of multiplier :

> “...We find that there are different judgements by this Court giving different multipliers. This would depend on the facts and circumstances of each case. The multiplier system is sound in computing compensation is now well settled but what multiplier should be applied would depend on various circumstances. The age of the deceased, the age of the dependents, not only existing

> salary when he did if any additional sum payable to the deceased depending upon the nature of job in which he was working, his chances of promotion, the life expectancy etc. Hence the multiplier is bound to change to some degree.".

The Court also referred to the observations made in **S. Chandra V. Pallavan Transport Corpn.** (1994) 2 SCC 189 and held that life expectancy in India even in the year 1979 was not less than 65 years.

Thereafter, in **United India Insurance Co. Ltd and others v. Patricia Jean Mahajan and others**, (2002) 6 SCC 281 = 2002(3) ACJ 1441, decided on July 8, 2002, the Apex Court after reviewing the previous decisions on the question of multiplier made the following observations :

> ".....except in very rare cases, multiplier system should not be deviated from. The other methods, which were in vogue prior to introduction of multiplier system have been held to be no more good system. The choice of multiplier may differ to some degree as observed in the case of Jyoti Kaul depending upon various facts and circumstances of the case. Though, normally the multiplier as indicated in the Second Schedule should be applied as it is found to be a safe guide for the purpose of calculation of amount of compensation...."

The Court accepted the submission that the amount of multiplicand shall surely be relevant and in case it is a high amount, a lower multiplier can appropriately be applied. The Apex Court based this conclusion on the following logic:-

> "The Court cannot be totally oblivious to the realities. The Second Schedule while prescribing the multiplier, had maximum income of Rs.40,000/- p.a. in mind, but it is considered to be a safe guide for applying the prescribed multiplier in cases of higher income also but in cases where the gap in income is so wide as in the present case income is 2,26,297/- dollars(Rs. 68 lakhs,

by converting it at the rate of Rs.30/- per dollar) in such a situation, it cannot be said that some deviation in the multiplier would be impermissible. Therefore, a deviation from applying the multiplier as provided in the Second Schedule may have to be made in this case...

.....By Indian standards it is certainly a high amount. Therefore, for the purposes of fair compensation, a lesser multiplier can be applied to a heavy amount of multiplicand. A deviation would be reasonably permissible in the figure of multiplier even according to the observations made in the case of Susamma Thomas where a specific example was given about a person dying at the age of 45 leaving no heirs being a bachelor except his parents. "

The Apex Court further made the following observations:

"21. The purpose to compensate the dependents of the victims is that they may not be suddenly deprived of the source of their maintenance and as far as possible they may be provided with the means as were available to them before the accident took place. It will be a just and fair compensation. But in cases where the amount of compensation may go much higher than the amount providing the same amenities, comforts and facilities and also the way of life, in such circumstances also it may be case where, while applying the multiplier system, the lesser multiplier may be applied. In such cases, the amount of multiplicand becomes relevant. The intention is not to overcompensate.

22. We therefore, hold that ordinarily while awarding compensation, the provisions contained in Second Schedule may be taken as a guide including the multiplier, but there may arise some cases, as the one in hand which may fall in the category having special features of facts calling for deviation from the multiplier usually applicable."

In **Supe Dei and others v. National Insurance Co. ltd. and another**, 2002 ACJ 1166, the three Judge Bench of the Apex Court held as under :

"8.While considering the question of just compensation payable in a case all relevant factors including the

> appropriate multiplier are to be kept in mind. The position is well settled that the Second Schedule under section 163-A to the Act which gives the amount of compensation to be determined for the purpose of claim under the section can be taken as a guideline while determining the compensation under section 166 of the Act. In that view of the matter, there is no reason why multiplier of 17 should not be taken as the appropriate multiplier in this case. "

In **Chellammal and others v. Kailasam and another**, 2006 ACJ 854 where the Apex Court adopted multiplier of 15 years in the case where the deceased was aged 41 years on the date of accident. In that case, the Tribunal had applied multiplier of 24. The High Court on appeal had reduced the compensation by applying multiplier of 12. In the claimant's appeal, the Apex Court applied the multiplier of 15 on the basis of Second Schedule to the Act.

11. On the basis of the above decisions, Mr. Hakim vehemently submitted that the multiplicand in this case is Rs.57,600/- which is not a big amount unlike the figure in the case of **United India Insurance Co. Ltd and others v. Patricia Jean Mahajan and others**(supra). It is therefore, submitted by Mr. Hakim that even where annual income or annual dependency benefits is higher than Rs. 40,000/-, the Second Schedule provides for a safe guide for adopting the multiplier. He also submitted that the claimants are widow, three children of the deceased out of whom two were minor on the date of accident, the compensation for loss of dependency benefits ought to be computed applying the multiplier of 15 years as per the Second Schedule as deceased was 45 years old on the date of accident.

12. Mr. R.H. Mehta for the insurance company has relied on certain decisions of the Apex Court in support of the

submission that the multiplier should not be on the basis of Second Schedule and that if the multiplier as per the Second Schedule were to be adopted, the claimants in this case would get dependency benefits for the entire period of the remaining service span of the deceased. It is submitted that the claimants are not to be overcompensated by giving them in one lump-sum what the deceased would have contributed to the family over a long period of 15 years. It is also vehemently submitted that some consideration has to be given to the fact that not only advance payment of future benefits is being given but also that such amount is given with interest from the date of claim petition.

13. Mr. Mehta placed reliance on following judgements of the Apex Court to support his submissions :

Tamil Nadu State Transport Corporation ltd. v. S. Rajapriya and others, 2005 ACJ 1441 = 2005(6) SCC 236.

U.P. State Road Transport Corporation v. Krishna Bala and others, 2006 ACJ 2114 = 2006(6) SCC 249.

Managing Director, TNSTC ltd. v. K.I. Bindu and others, (2005) 8 Supreme Court Cases 473 = 2006(1) ACJ 423.

In the aforesaid decisions, Apex Court has laid down the manner of arriving at compensation as under :

> “9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependents and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependents. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.
>
> 11. There were two methods adopted to determine and for calculation of compensation in fatal accident

> actions, the first the multiplier mentioned in Davies case, (1942) AC 601 and the second in Nance v. British Columbia Electric Railway Co. ltd., (1951) AC 601.
>
> 12. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which dependency is expected to last."

After approving the multiplier method as the appropriate method referring to the principles regarding choice of multiplicand and multiplier in Halsbury's Laws of England, the Apex Court referred to the principles laid down in the decision of **Susamma Thomas case**, 1994 ACJ 1 (SC) = 1994(2) SCC 176 and then referred to the observations in **Trilok Chandra's case**, 1996 ACJ 831(SC) = 1996(4) SCC 362 and held that the Second Schedule to the M.V. Act suffers from many defects, that the same is to serve as a guide, but cannot be said to be an invariable ready-reckoner. However, the appropriate highest multiplier was held to be 18 for the age group of 21 years to 25 years when an ordinary Indian citizen starts independently earning and the lowest would be in respect of a person in the age group of 60 to 70, which is the normal retirement age.

14. Mr. Mehta submits that on the basis of the above principles, the Apex Court adopted the multiplier of 12 and not 16 as adopted by the Tribunal and High Court in the case where the deceased was about 38 years of age on the date of accident and the claim petition was filed by the widow, minor

child and mother of the deceased. He also submitted that on the basis of same principles in **U.P. State Road Transport Corporation v. Krishna Bala and others** (supra), the Hon'ble Supreme Court adopted multiplier of 13 where the deceased was aged 36 years on the date of accident and and in **Managing Director, TNSTC ltd. v. K.I. Bindu and others**(supra), the Apex Court adopted multiplier of 13 and not 17 as adopted by the Tribunal, where the deceased was aged 34 years on the date of accident. It is therefore, submitted by Mr. Mehta for the insurance company that when multiplier of 13 is adopted by the Apex Court where the deceased was 36 years old, in the facts of the present case, deceased being 45 years on the date of accident, the multiplier could not have been higher than 9.

15. Upon analysis of various decisions of the Apex Court cited at the Bar, the first thing to be made clear is that the observations regarding the multiplier method in general are made in context of two different methods adopted to determine and calculate compensation in fatal accident actions. The first method was the Multiplier method as explained in Davies case, (1942) AC 601 and the other one in Nance case(1951) AC 601. While in the first method i.e. the multiplier method, popularly so called, the amount of dependency benefit or loss to the claimants i.e. multiplicand is to be straightway capitalised by an appropriate multiplier depending on the age of the deceased (or that of the claimants, whichever is higher) and several other considerations depending on the rate of interest and the period over which the capital would also be consumed up apart from the annual interest. In the Nance method, loss of dependency benefits or the multiplicand is first multiplied by number of years based on the life expectancy of the deceased

and probable length of working life of deceased from the date of accident. This amount is to be then reduced taking into account the various contingencies of life such as illness, disability and unemployment etc.

16. It is in this context of the above distinction between two methods that the Courts have preferred to adopt the multiplier method (Davies method)where an appropriate multiplier is adopted for the purpose of multiplying the loss of dependency or the multiplicand and 18 is considered to be the highest multiplier for computing compensation for loss of dependency benefits in fatal accident cases.

17. It is also true that in the two Judge Bench decisions rendered in the year 2000 and 2002 viz. **Jyoti Kaul and others v. State of M.P. and another**(supra), decided on February 8,2000 and **United India Insurance Co. Ltd and others v. Patricia Jean Mahajan and others**(supra), decided on July 8, 2002, the Apex Court leaned in favour of adopting the multiplier as indicated in the Second Schedule barring exceptional circumstances such as a very huge amount of multiplicand. In the later decisions of two Judge Bench rendered more recently in the years 2005 and 2006 indicated in para-13 here-in-above, the trend is to adopt a lower multiplier than the one indicated in the Second Schedule.

18. We cannot however, overlook the three Judge Bench decision in **Supe Dei and others v. National Insurance Co. ltd. and another** 2002 ACJ 1166 in terms holding that :

> "The position is well settled that the Second Schedule under section 163-A to the Act which gives the amount of compensation to be determined for the purpose of claim under the section can be taken as a guideline

while determining the compensation under section 166 of the Act."

In that case, the deceased was aged 32 years on the date of accident which took place in the year 1997. The deceased was drawing salary of Rs. 4,000/- per month including the overtime allowance of Rs. 2,000/- per month. The Tribunal adopted multiplier of 15 and awarded compensation of Rs. 5,42,000/-. On appeal, the High Court excluded the overtime allowance from the monthly income and determining the net income of the deceased at Rs.1515/- per month awarded compensation of Rs. 3,15,000/-. The Apex Court accepted the claimants' contention that no reason was given by the Tribunal or High Court for fixing 15 as multiplier when the Schedule provided for multiplier of 17. The Apex Court also enhanced the rate of interest from 6% to 9%, after referring to the decision in the case of **Kaushnuma Begum v. New India Assurance Co. ltd.** (supra), wherein also two Judge Bench had leaned in favour of adopting multiplier as contained in Second Schedule.

19. Having regard to the facts in **Supe Dei and others v. National Insurance Co. ltd. and another**(supra), decided by a three Judge Bench and particularly the amount of monthly income which was determined by the High Court at only Rs. 1515/- it is again necessary to refer to the observations made by the two Judge Bench in **United India Insurance Co. Ltd and others v. Patricia Jean Mahajan and others**(supra), that the structured formula as provided under the Second Schedule is to be applied in case of victims whose income is upto Rs. 40,000/- per annum. In paragraph 20 of the said decision, it is specifically mentioned that the Second Schedule while prescribing the multiplier, had maximum income of Rs.40,000/- p.a. in mind, but it is

considered to be a safe guide for applying the prescribed multiplier in cases of higher income also except in cases where the gap in income is very wide. Section 163-A read with Second Schedule was inserted in the M.V. Act, 1988 in the year 1994. Hence having regard to the fact that Consumer Price Index in the year 1994 was 1370 and the Consumer Price Index in the year 2005 was 2712, while adopting the multiplier from the Second Schedule, it would not be unreasonable to apply it in cases where annual income of the deceased/victim was Rs.80,000/-. We find that all the cases where the Apex Court adopted the multiplier from the Second Schedule were cases where the annual income of the victim was less than Rs. 40,000/- or slightly higher.

We also cannot overlook the fact that Section 163A provides for structured formula of compensation on the basis of actual income of the deceased on the date of the accident and consideration of future prospects is not provided under section 163 A.

20. However, the amount of income of the deceased is not to be the sole criterion for deciding whether the multiplier should be adopted on the basis of the Second Schedule. As already held in Apex Court decisions where only the parents are the claimants, the age of the parents would also be relevant for determining the multiplier. Obviously, in such a case multiplier would be lower as compared to a case where the claimants are widow and children of the deceased. Even the age of the children may also be a relevant circumstance for determining appropriate multiplier because in cases of claimants being widow and a five year old child, the multiplier would be higher than in cases of claimants being widow and a twenty year old son or daughter. Hence, choice

of appropriate multiplier would depend on facts and circumstances of each case, having regard ordinarily to the amount of multiplicand and the age of the deceased and the claimants.

21. Coming to the facts of the present case, the deceased was aged 45 years and five months on the date of accident survived by widow and three children and the Second Schedule would provide for multiplier of 13. But we find that computing compensation by adopting multiplier of 13 years would give the claimants the dependency benefits for the entire remaining service career of the deceased in one lump-sum amount. In facts of the case, including the fact that the prospective income of the deceased has been taken at Rs.57,600/- per annum and that the deceased would have retired on superannuation after 13 years, multiplier of 13 years would be on the higher side. Having regard to the various decisions of the Apex Court, particularly, those rendered in the years 2005 and 2006 and also considering that we have assessed the prospective income of the deceased at a figure substantially higher than the actual income of the deceased on the date of the accident, we would have been inclined to adopt the multiplier of 9 years.

22. However, learned advocate for the claimants has also invited our attention to the fact that the family of the deceased holds agricultural lands as evidenced by the documents at exh. 30 and 31. As per the certified copies of the village revenue records, there is agricultural holding of 7 Hectares and 31 Are, equivalent to about 20 acres in Kalol Taluka Panchayat limits. We therefore, find considerable substance in the submission of Mr. Hakim that even after retirement deceased would have continued to be gainfully self

employed and would have continued to contribute substantial amount to the family. In view of the peculiar circumstances, we are of the view that multiplier of 12 would be the appropriate one and accordingly we compute compensation for loss of dependency benefits at Rs. 6,91,200/-(Rs.57,600/- x12) and adding thereto the other conventional amounts i.e. Rs.25,000/- for loss to the estate, Rs. 15,000/- for loss of consortium and Rs. 5,000/- for funeral expenses, the total amount of compensation works out to Rs.7,36,200/-.

23. Coming to the question of rate of interest, Mr. Hakim for the claimants submitted that additional amount may also be paid with same rate of interest i.e. 12% awarded by the Tribunal. Mr. Mehta would submit that this Court should reduce the rate of interest from 12% to 7.5% for the entire amount of compensation. For this purpose, reliance is placed on the decisions of the Apex Court in **New India Insurance Co. ltd. v. Charlie**, (2005) ACJ 1131(SC) = 2005(10) SCC 720 and in **New India Assurance Co. Ltd. v. Satender and others**, 2007 ACJ 160 awarding interest at the rate of 7.5% (reducing the rate of interest from 9% to 7.5%).

24. Having heard the learned advocates for the parties on the question of interest we see no justification for reducing the rate of interest on the compensation awarded by the Tribunal in the year 2000. In the first place, this appeal is filed by the original claimants for enhancement of compensation and no cross appeal or cross objections have been filed by the insurance company and, therefore, we are not inclined to interfere with the rate of interest awarded by the Tribunal. Secondly, the award was passed as far back as in the year 2000 when the inflation was at a high rate and interest was being awarded at the rate of 12% per annum.

25. However, for the additional amount being awarded under this judgement (Rs.1,05,200/-), we are inclined to award interest at the rate of 9% per annum, having regard to the recent decision of the Apex Court in **Tejinder Singh Gujaral v. Inderjit Singh and another**, (2007) 1 SCC 508 = 2007(1) ACJ 37.

26. It is true that in **New India Assurance Co. Ltd. v. Satender and others**(supra), the Apex Court reduced the rate of interest from 9% awarded by the Tribunal to 7.5%. However, that was done in a case where the deceased was a child aged 9 years who died in a motor vehicle accident which took place on 7th May, 2002. The Tribunal awarded compensation of Rs. 4,45,000/- which the Apex Court reduced to Rs. 1,80,000/- on the ground that at such an early age uncertainties in life are so many that nothing can be assumed with reasonable certainty. In the facts of the present case, however, the accident in question took place in the year 1995 and there is documentary evidence showing the certainty for rise in future income of the deceased who had a secure job with the District Panchayat and was 45 years old on the date of the accident.

27. The appeal is accordingly partly allowed. The appellant claimants are entitled to recover additional compensation of Rs. 1,05,200/- with interest at the rate of 9% p.a. from the date of claim petition till the date of deposit which shall be made by respondent no.3 insurance company within one month from the date of receipt of a certified copy of this judgement.

We further direct that out of the additional amount of

compensation being awarded under this judgement, 90% shall be invested in more than one fixed deposits in the name of claimant no.1-widow of the deceased with a nationalised bank near her residence for a period of five years with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, permission to the claimant no.1(widow of the deceased) to withdraw interest periodically accruing on the fixed deposits and a direction to the bank not to permit the bank accounts of the claimants to be operated by any power of attorney holder other than a close relative of the claimants.

The remaining amount shall be disbursed to the claimant no.1(widow of the deceased) by Account Payee cheque after proper verification and after informing her about the amounts being invested/disbursed and the terms and conditions of investment.

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)